



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

RESPONSES TO QUESTIONS FROM THE  
COMMITTEE ON HOUSE ADMINISTRATION  
MAY 1, 2019

1. *Why has the position of General Counsel been vacant or filled in an acting capacity since July 2013?*

The Commission has a General Counsel in all but title. The Deputy General Counsel serves with distinction as Acting General Counsel. She commands the respect of her staff and enjoys the support of the full Commission.

According to recruiting specialists working with the Commission, the salary limit placed on the General Counsel by the FECA makes attracting a strong pool of applicants to these positions more challenging. The FECA currently specifies that the General Counsel is to be paid Level V of the Executive Schedule. This position supervises personnel at the GS-15 and Senior Level pay scales, which often provide higher salaries than V of the Executive Schedule.<sup>1</sup> The General Counsel has significant responsibilities and oversight duties with respect to both administrative and legal areas, as well as management over approximately one third of agency personnel. Effectively, the General Counsel runs a small law firm within the agency. The appointment and retention of this key leader has been identified by the Inspector General as ongoing management and performance challenges to the Commission in the 2018, 2017, 2016, 2015 and 2014 Agency Financial Reports and in previous Performance and Accountability Reports.<sup>2</sup>

Because of the challenges in maintaining consistent senior leadership, the Commission unanimously adopted a Legislative Recommendation in 2018, 2017, 2016, 2015, 2014, 2013 and 2011 that urges Congress to address this situation.<sup>3</sup> Specifically, the Commission recommends that Congress remove the statutory bar on the FEC's participation in the Senior Executive

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<sup>1</sup> The FECA also specifies that the Staff Director be paid at Level IV of the Executive Schedule.

<sup>2</sup> The Inspector General has also identified the Staff Director's dual roles as an ongoing management and performance challenge in 2018, 2017, 2016, 2015 and 2014 Agency Financial Reports and stability in this position in previous Performance and Accountability Reports.

<sup>3</sup> The current Legislative Recommendation to provide the FEC with authority to create SES positions would make a number of positions eligible for SES consideration, including the General Counsel, Staff Director, and Inspector General positions. In 2004, the Commission adopted a similar Legislative Recommendation that sought inclusion of the FEC in the SES program and an adjustment of the compensation of the General Counsel. See <https://www.fec.gov/legal-resources/legislation/>.

Service (SES) Program and remove the statutory references to the Executive Schedule in FECA with respect to the General Counsel, so that the General Counsel would be compensated under the same schedule as the Commission's other senior managers. This revision would remedy the current situation where the Commission's top managers are compensated at a lower rate than many of their direct reports, and would ensure that the Commission can retain highly qualified individuals to serve in those positions as well as enable it to remain competitive in the marketplace for Federal executives when filing the current vacancy or when further vacancies arise.

While the Commission awaits a legislative solution to this situation, it has adopted an interim solution. The General Counsel's position is currently filled on an acting basis by a Deputy General Counsel. This has permitted the Commission to maintain needed stability in this key leadership position. Moreover, the Commission has been able to continue to receive the services of a leader who was selected for this position after substantial experience working in positions of significant responsibility for the FEC. The current Acting General Counsel has served the Commission in this capacity since September 2016 after having served the Commission as Deputy General Counsel since November 2012. Were the Commission to appoint the current Acting General Counsel as the Commission's General Counsel, it would entail an over \$20,000 pay cut.

For the reasons stated above, at this time, the Commission is not actively pursuing a permanent appointment for General Counsel. However, the Commission asks that Congress adopt our Legislative Recommendation so that the FEC would be in a position to hire a permanent General Counsel at a salary level commensurate with the job's responsibilities and required qualifications.

2. *What challenges has the Commission faced in hiring a General Counsel?*

Please see the response to question 1 above.

3. *What is the status of hiring a permanent General Counsel, and when do you expect to decide on a hire?*

Please see the response to question 1 above.

4. *Why has the position of Inspector General been vacant since March 2017?*

In 2017, the Commission's former Inspector General, Lynne McFarland, departed the agency after twenty-seven years in the position. Upon her departure, the Deputy Inspector General oversaw the work of the office and provided continuity of operations while the Inspector General position was vacant. During 2018, the Commission made a concerted effort to select and appoint a new Inspector General, and a candidate was selected to fill the Inspector General position in fall of 2018. In December 2018, the candidate accepted the firm job offer, but

subsequently withdrew from consideration in March 2019. Upon this candidate's withdrawal, the Commission reconsidered the remaining applicants on the selection certificate. The Commission ultimately decided not to make a selection from this pool of candidates, and recently posted a new vacancy announcement for the IG position.

5. *How has the lack of an Inspector General affected the Commission, including the simultaneous vacancy of a Deputy Inspector General?*

The Office of the Inspector General (OIG) has reported to the Commission that the absence of an Inspector General (IG), an Acting Inspector General (Acting IG), or Deputy Inspector General (DIG) is limiting OIG's ability to carry out its functions under the IG Act. Some examples provided by the OIG are as follows:

- **FY 2019 Financial Statement Audit** – It may be difficult to complete the FEC's mandatory annual financial Statement audit as mandated by the Accountability Tax Dollar Act of 2002. The absence of an IG, Acting IG, or DIG prevents approval of the audit and proper contracting procedures to hire an independent accounting firm. In light of this situation, FEC staff, working with current OIG staff, have begun the procurement process for obtaining the services of an independent accounting firm so that an Acting IG will be in a position to select a firm promptly.
- **DATA Act Audit** – The mandatory DATA Act audit requires an IG, Acting IG, or DIG to approve the necessary audit workpapers.
- **Open Audits** – The OIG cannot fully complete or open new audits or reviews planned and reported in our FY 2019 workplan without an IG, Acting IG, or DIG to approve audit plans, workpapers, or final reports. The OIG has continued to work on existing audits to the extent possible. Therefore, no audits closed this reporting period.
- **Investigating Criminal and Administrative Allegations** – The OIG has continued to open hotline and investigations as allegations are forwarded to the office and as required by the Inspector General Act. However, due to the absence of an IG, Acting IG, or DIG, the office has limited its scope regarding document requests and has not issued subpoenas and other documents that require an IG, Acting IG, or DIG signature. As a result some leads and information submitted to the OIG have become dormant. However, the OIG has continued to work on investigations to the extent possible.
- **Finalizing Investigative Reports** – The OIG has not released any final Reports of Investigations (ROI) because the reports require an IG, Acting IG, or DIG signature. Therefore, no investigative reports were closed this reporting period.

6. *What is the status of hiring a permanent Inspector General, and when do you expect to decide on a hire?*

On April 15, 2019, the Commission posted a new vacancy announcement for the Inspector General position. The application period for this vacancy announcement runs until May 6, 2019. The Commission anticipates the hiring process—from the time the vacancy

announcement closes until the date a permanent Inspector General is selected—will take approximately three to four months. The Commission is working with the Council of Inspectors General for Integrity and Efficiency (CIGIE) to identify a candidate from another Federal agency to serve as the FEC’s Acting IG while the Commission completes the hiring process for a permanent IG. CIGIE recently announced this Acting IG opportunity to its members, and the Commission has received applications from several interested candidates. The Commission expects to have an Acting IG in place before the end of May.

7. *What is the status of hiring a permanent Deputy Inspector General?*

The Commission has decided that the Deputy Inspector General position should not be filled until an Inspector General is in place on a permanent or acting basis. Staff have prepared hiring documents that will be available to an Inspector General should that person elect to fill this vacancy.

8. *What other positions are filled by individuals in an acting capacity?*

In addition to the General Counsel, the following 12 positions are currently filled on an acting basis:

- Associate General Counsel for Enforcement;
- Associate General Counsel for Policy;
- Director of Human Resources;
- Deputy Associate General Counsel for Enforcement;
- Four Assistant General Counsels (Litigation, Policy, Enforcement and Admin Law);
- Reports Analysis Division Supervisory Training & Program Manager;
- Supervisory IT Specialist - Database Manager;
- Accountant; and
- Executive Secretary to the General Counsel.

The Commission has posted vacancy announcements to fill four of these acting positions on a permanent basis. The Commission will post an additional vacancy announcement by early May.

The appointment of one acting position has a ripple effect on other positions within the agency. For example, because the Deputy Associate General Counsel for Enforcement has been filled in an acting capacity by an Assistant General Counsel for Enforcement, the Assistant General Counsel for Enforcement has now been filled in an acting capacity by an Enforcement Attorney. The appointment of staff into acting positions can be an opportunity for staff to develop new skills and demonstrate that they are ready for increased responsibilities.

9. *What committees exist at the Commission, and what is each committee's purpose?*

The Commission has instituted up to five committees: Finance, Regulations, Press, Personnel and Litigation Committees. The Chair and Vice Chair of the Commission appoint the members of committees after consultation with their colleagues about serving on committees. The Commission's committee structure is one mechanism that allows Commissioners on both sides of the aisle to work together in small groups to address various issues. Formal meetings are held as needed. However, a lack of formal meetings, agendas, and minutes does not necessarily indicate that Commissioners are not meeting to discuss Finance, Regulations, Press, Personnel, or Litigation matters in informal settings.

Finance Committee

The Finance Committee is composed of the Vice Chair, a member from the other political party, and the Chair as an ex-officio member. Traditionally, the Vice Chair serves as chair of this committee. The Finance Committee facilitates the decision-making process for planning purposes and presentation of budget issues for full Commission consideration.

Specific budget matters discussed and reviewed by the Finance Committee include:

1. A summary of the budget requests submitted by the offices/divisions for deciding the funding level that FEC should seek from the Office of Management and Budget (OMB).
2. The budget submission to OMB, generally due in early September.
3. OMB's passback decision on funding level and deciding whether to appeal. If FEC decides to appeal, the Finance Committee receives and approves the written appeal to OMB.
4. The Congressional budget request, generally due in early February.
5. The Management Plan.
6. Proposed reallocations of funds between offices.
7. The status of funds for the current fiscal year.

The Committee meets as needed to discuss these issues. Items 2 - 6 are subject to approval of the full Commission.

Since 2012, the Finance Committee has held at least the following number of formal meetings:

2012:	6
2013:	2
2014:	6
2015:	1
2016:	4
2017:	6
2018:	3
2019:	1

Agendas were located and provided for 20 of the above identified Finance Committee meetings held since 2012. The Finance Committee does not keep minutes of its meetings.

#### Regulations Committee

The Regulations Committee is a working group that focuses on Commission rulemakings. It consists of two Commissioners, with no more than one member from the same party. Its meetings are usually attended by staff members of the other Commissioners as well as relevant staff from the Office of General Counsel and the Office of the Staff Director.

The Regulations Committee works closely with the General Counsel and the managers of the Policy Division and can be a venue for prioritizing rulemakings and making policy decisions on draft rules and rulemaking documents. Typically, the Office of General Counsel's (OGC's) Policy Division drafts and sends to the Regulations Committee and all Commissioners recommended rulemaking priorities and documents such as Notices of Proposed Rulemaking (NPRMs), final rules, and Explanations and Justifications (E&Js) for final rules. The Committee meets as needed to discuss these issues. In some rulemakings, Commissioners and their staffs may discuss draft rulemaking documents directly with OGC staff. In others, the Commissioners on the Regulations Committee will meet with their colleagues to get feedback on rulemaking documents, which they then convey to OGC-Policy.

Since 2012, the Regulations Committee held at least the following number of formal meetings:

2012:	2
2013:	1
2014:	2
2015:	1
2016:	0
2017:	0
2018:	2
2019:	1

Agendas were located and provided for six of the Regulations Committee meetings identified above. The Regulations Committee does not keep minutes of its meetings.

#### Other Committees

The Personnel Committee consists of two members, with no more than one member from the same party. It works with the Office of Human Resources to coordinate Commission involvement in the interviewing and selection of candidates for positions that report directly to the Commission, and, on occasion, other positions. The Personnel Committee meets informally as necessary. Typically, hiring approvals are handled by Committee members via email and in-person follow-up conversations as necessary.

The Press Committee consists of two members, one from each party, who review all agency press releases, including Weekly Digests, prior to publication and approve all official statements to the press made on behalf of the Commission. Formal meetings are not needed for this committee to carry out its duties.

When formed, the Litigation Committee has been composed of two members of the Commission, with no more than one member from the same party. It provided oversight and guidance to the Litigation Division, particularly when novel challenges to Commission actions were filed and in-depth discussions regarding defense strategy would be beneficial. Regular meetings are not needed for this committee to carry out its duties. The full Commission receives written and oral monthly status reports from the Litigation Division, and events in litigation often happen too fast to lend themselves to regularly scheduled meetings. While some major decisions in litigation—such as the initiation of an enforcement action or the decision to appeal—require a formal vote of the full Commission, less consequential issues handled by OGC’s Litigation Division can sometimes be resolved through staff discussions with a Litigation Committee. No formal meetings have taken place since 2012.

10. *For each committee listed in Question 9, how many times has it met each year since 2012? Please provide a copy of any agendas and minutes from these committee meetings.*

Please see the response to question 9 above.

11. *How have the two Commissioner vacancies affected the Commission?*

As background to the answer, FECA requires four affirmative votes in order to take most actions in enforcement matters, litigation matters, rulemakings, advisory opinions, and matters arising under the public financing program for presidential elections.<sup>4</sup> Moreover, Commission Directive 10 extends the four-vote requirement to all motions “exercising a power and duty under the Act” that do not already require four votes by statute, and also imposes a four-member quorum requirement for any meeting of the Commission.<sup>5</sup>

The largest challenge posed by the two vacancies is that all actions by the Commission must now have the unanimous support of all sitting Commissioners, a situation not directly contemplated by FECA. Another challenge posed by the vacancies is primarily logistical. Under Directive 10, all four sitting Members of the Commission must be present, either physically or by telephone, in order for the Commission to meet. Moreover, if a Commissioner is recused from a matter, that matter cannot go forward until the reason for the recusal is removed or one of the other vacant seats is filled.

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<sup>4</sup> FECA, §§ 306(c) & 309, *codified at* 52 U.S.C. §§ 30106(c) & 30109.

<sup>5</sup> See [https://www.fec.gov/resources/cms-content/documents/directive\\_10.pdf](https://www.fec.gov/resources/cms-content/documents/directive_10.pdf).

In practice, however, with the exception of certain litigation matters, the issue of two vacancies has had minimal practical impact on Commission business, as the Commission continues to either unanimously agree or split.

12. *According to the Inspector General Statement on the Federal Election Commission’s Management and Performance Challenges (2018), the Inspector General contracted with a consultant company to conduct a study to determine the root causes of low employee morale at the agency. The Inspector General wrote that it “believe[s] that an action plan from top level management to address all the root causes of low employee morale is still critical.” Has the Commission established an “action plan?” If so, please describe it. If the Commission has not created an action plan, why not?*

The Commission understands that the success of its programs depends upon the skills and commitment of its staff. On July 26, 2016, the FEC’s OIG released a Morale Study that identified causes of low employee morale at the agency, including poor communication, a perceived lack of effectiveness by management and a perceived lack of diversity among managers.<sup>6</sup> Following the release of the Morale Study, Commissioners met with staff members one-on-one and in small groups to hear their concerns. The FEC Staff Director expanded his open door policy to actively invite staff members to meet one-on-one to discuss their suggestions for process improvements, improvements to work-life balance issues and innovations. While we recognize there are multiple factors that contribute to agency morale, and there are no simple solutions, the Commission has outlined a plan based in part on the results of these discussions to continue to foster a workplace that is positive and productive, where everyone feels valued. The primary elements of this plan are outlined below and were published in the FEC’s FY 2018 Agency Financial Report.

Notably, the FEC has already seen successes in improving morale. In the 2018 FEVS results, the FEC achieved an eight percentage point gain in employee satisfaction.<sup>7</sup> The FEC had the second largest gain of all small agencies with more than 100 employees. Additionally, the FEC went from having less than half of its employees responding in the survey in FY17 to 61% responding to the FEVS survey during FY 2018, fifteen percentage points above the government-wide average. Out of 71 items in the survey, 64 had positive gains when compared to FY17 results. Of particular note is that these gains came in the midst of significant changes at the FEC, primarily the move to a new location. The agency’s improvement earned it the Most Improved Small Federal Agency award from the Partnership for Public Service, Best Places to Work in 2018.

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<sup>6</sup> The Morale Study is available on the Commission’s website at <https://www.fec.gov/resources/cms-content/documents/RootCausesofLowEmployeeMoraleStudy-FinalReport-OIG-15-06.pdf>.

<sup>7</sup> See [https://www.govexec.com/management/2018/10/agencies-biggest-gains-and-losses-employee-happiness/152417/?oref=govexec\\_today\\_pm\\_nl](https://www.govexec.com/management/2018/10/agencies-biggest-gains-and-losses-employee-happiness/152417/?oref=govexec_today_pm_nl).

## **Employee Morale Plan for FYs 2018 and 2019 from the FY 2018 Agency Financial Report**

**Management Performance Plans.** The following items were included in all managers' performance plans for the 2017-18 review year, as well as the 2018-19 review year:

- Engage in efforts to improve morale and foster a culture of trust within the manager's area of responsibility, including implementing recommendations from the Morale Study.
- Engage in efforts to improve as a manager, including training, participation in a 360 Review, and development and implementation of a Leadership Development Plan.
- Provide training opportunities (both formal and informal) for all staff.
- Meet with each employee at least one time during the performance year in addition to the six-month and annual reviews to get the employee's input on how things are going and ideas for improvement.

**Involving Staff in Preparation for the FEC's Office Space Move.** In the spring of 2018, the FEC moved its entire workforce to new office space. Throughout the entire FEC move process, management was committed to engaging staff and keeping staff informed. Bargaining Unit members served on the Lease Renewal Advisory Team (LRAT) and on each of its subcommittees. Management also regularly updated an internal communications portal, "FEC Move," on the agency's intranet page that provided LRAT meeting minutes, photos of construction progress, and news about the move. Management has continued to solicit feedback from staff about the new office space and remains responsive to employee concerns.

**Management Training.** The agency has implemented several training programs targeted to areas where improved performance by managers and supervisors can boost employee morale. Trainings have been held on topics such as diversity and inclusion, conflict resolution, general management skills, and individual leadership training. The Commission also partnered with OPM to deliver on-site supervisory training to managers in the fall of 2018. Moreover, the Commission has included the phased implementation of a supervisory training plan as FY 2018 and 2019 performance measures in its Annual Performance Report.

Since September 2016, over half of agency managers have undertaken 360 Reviews conducted by OPM and developed leadership plans to develop strengths and improve. Importantly, language has been added to all managers' performance plans requiring that the managers demonstrate a commitment to improving morale and documenting steps taken within his or her area of responsibility.

**Staff Professional Development.** Divisions throughout the agency continue to give staff opportunities for professional growth. These opportunities include:

- OGC detail program with the US Attorney's Office in the District of Columbia, which provides staff attorneys the opportunity to prosecute general misdemeanor cases and develop their investigative and litigation skills;
- OGC staff opportunities to serve details within different divisions in the Office, as well as on details to Commissioner's offices;
- OCIO staff partnering one-on-one with staff from the General Services Administration's 18F to learn new information technology skills;
- RAD staff on detail to other agency divisions;

- Information Division conducted training sessions for agency staff that participate in outreach efforts to learn how to maximize webinar participation;
- RAD conducted branch-wide professional development months focused on skills training and one-on-one coaching sessions available to all staff;
- Brown-bag lunches and informational sessions where staff can learn about what other divisions do and ask questions of senior staff and Commissioners; and
- Expanded opportunities for eligible FEC staff to compete for detail positions and temporary promotions within the agency.

**Diversity in Hiring and Promotion.** Agency managers have undertaken a substantial effort to expand the diversity of the pool of applicants that apply for FEC positions. Every year OGC attends multiple internship fairs hosted by local law schools reaches out to other law schools in the country in its ongoing efforts to create diverse internship classes. For example, OGC has also reached out to Black Law Students Associations from around the country and continues to reach out to Howard Law School about opportunities with its externship program. Agency managers continue to ensure that hiring panels are diverse and inclusive, ensuring that multiple viewpoints are present.

**Communication.** Management has undertaken efforts to communicate more clearly and consistently across the agency as well as within divisions. Each division has been encouraged to hold regular division meetings, and senior leaders routinely attend those meetings to answer questions on any topic, as schedules have allowed. We have also attempted to be more proactive in getting information out. Some divisions are holding brown bag lunch and learn programs and are undertaking other, informal activities to give staff and managers a chance to interact. Most importantly, management continues to encourage an open door policy for employees to come with any questions or concerns at any time.

Management understands that improving morale is not a one-off, “check the box” project. Our efforts on this front will continue.

*13. How is the Commission addressing the root causes of low employee morale?*

Please see the response to question 12 above.

*14. According to the Inspector General Statement on the Federal Election Commission’s Management and Performance Challenges (2018), “the senior leadership roles of the Staff Director and Chief Information Officer (CIO) are filled by the same individual. As both senior leader positions are critical to the agency, we strongly believe these two positions should have separate full-time personnel solely dedicated to each position.” Do you agree with the Inspector General?*

Yes. All of the Commissioners agree that the Commission should have separate individuals filling the senior leadership roles of Staff Director and CIO. As is true of the General Counsel position (see response to question 1 above), the salary limit placed on the Staff Director

by the FECA (Level IV of the Executive Schedule) means that the Staff Director supervises personnel whose positions, on the GS-15 and Senior Level pay scales, often provide higher salaries than the statutory salary for the Staff Director. The Commission has long recommended that Congress de-link the Staff Director's salary from the Executive Schedule.

When the Commission promoted our CIO to Staff Director, we allowed him to continue to serve as CIO and be compensated at that level rather than absorb a substantial pay cut in order to accept the promotion. This has allowed the Commission to maintain consistency in its most senior staff leadership.

15. *According to the Office of Inspector General's most recent Semiannual Report to Congress (November 2018), a total of 7 Office of Inspector General Audits and Inspections had 50 recommendations that still required Commission follow-up as of August 2018. This includes 23 recommendations that have been 7 years outstanding (2010 Follow-up Audit of Privacy and Data Protection); 1 recommendation that is 6 years outstanding (2010 Follow-up Audit of Procurement and Contract Management); 7 recommendations that are 5 years outstanding (Inspection of the FEC's Disaster Recovery Plan and Continuity of Operations Plans); 3 recommendations that are 4 years outstanding (Audit of the FEC's Office of Human Resources); 4 other recommendations that are 4 years outstanding (Inspection of FEC's Compliance with FMFIA/OMB A- 123); 9 recommendations that are 2 years outstanding (Audit of the FEC Telework Programs); and 3 recommendations that are 9 months outstanding (Required Review Under the DATA Act). Why are these recommendations still outstanding? Please provide the Committee with a status update on each of these recommendations.*

For each of the seven audits and inspections listed above, please find attached Corrective Action Plans by the Commission's Staff Managers that provide a status update on each of the outstanding recommendations, and in some instances, on closed recommendations. These updates explain the key facts and circumstances related to each recommendation, including those related to why it remains outstanding.<sup>8</sup>

16. *Please provide a summary of any improvements that the Commission has made to its IT systems since Chinese hackers crashed them during the 2013 government shutdown. What is the Commission doing to address and anticipate future problems?*

Once the FEC resumed operations following the 2013 shutdown, the agency took a series of tactical steps to mitigate vulnerabilities and also launched a strategic approach to enhancing the FEC's cyber security posture. Thanks to these efforts and the assignment of additional Office

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<sup>8</sup> Three of the outstanding recommendations from the 2010 Follow-up Audit of Privacy and Data Protection that are referenced in the OIG Semiannual Report are not addressed in the November 2018 corrective action plan because they were resolved prior to that date. Additionally, two findings in the Audit of the FEC's Telework Programs and one finding in the Inspection of FEC's Compliance with FMFIA/OMB A-123 have been resolved.

of Chief Information Officer (OCIO) personnel as essential employees to remain in service during future Federal government shutdowns, FEC staff have been able to monitor and mitigate vulnerabilities continuously. In fact, during the recent partial government shutdown that shuttered the FEC during FY 2019, no information security incidents were identified.

### **Tactical Steps to Improve Cybersecurity Following the 2013 Shutdown**

Following the 2013 government shutdown, the FEC developed enhanced security zones across the FEC's existing website infrastructure. The FEC also implemented systems and tools to better protect and monitor the agency's website and systems. For example, the FEC implemented a Trusted Internet Connection (TIC), which reduced and consolidated external access points, managed the security requirements for FEC networks and Internet services and Security Operations Centers, and established compliance with OMB's TIC initiative.

The agency implemented a suite of cyber security tools that detect and stop malicious activity on our systems and equipment in real time and help the agency's network administrators better understand cyber threats by producing forensic details of attempted attacks. These tools also aid in detecting and stopping Advanced Persistent Threats, including those initiated via phishing emails.

The Commission also added an additional staff position in the Information Security Office to better manage these security systems and tools.

### **New Strategic Approach to Protecting Security and Privacy**

The Commission has taken strategic steps to implement a platform of security and privacy. FEC recognizes that perfect security is not feasible; it is a continuing process of detecting risks, process improvements and hardening defenses. For that reason, the benchmark of the FEC's approach to cybersecurity is practicability and continuous improvement. Our cybersecurity strategy outlines an approach of securing our infrastructure and preventing intrusions through a holistic cybersecurity program led by the Chief Information Security Officer.

#### **1. Adopt National Institute of Standards and Technology Cyber Security Framework**

The first pillar of the FEC's overarching strategy to protect security and privacy is to adopt the National Institute of Standards and Technology (NIST) Cyber Security Framework (CSF). The FEC is exempted from the Paperwork Reduction Act's requirement that Federal agencies to adhere to the NIST standards for information technology security. In FY 2014 the agency contracted with an IT security consultant to perform a comprehensive review of implementing further NIST guidelines at the FEC. During FY 2015, the Commission voted to adopt the NIST *Risk Management Framework* and NIST IT security control "best practices." Adoption of the NIST CSF was included as a strategic objective in the agency's IT Strategic Plan, FY 2017-2021. The FEC's cyber security strategy, which encompasses the NIST CSF and industry best practices, outlines an approach of securing our infrastructure and preventing intrusions through a holistic cybersecurity program.

## **2. Implement a Robust Security Architecture**

The second pillar of our strategy is to implement a robust security architecture. In partnership with the Department of Homeland Security (DHS), Massachusetts Institute of Technology and the Pacific Northwest National Laboratory, the OCIO has collaborated with FEC stakeholders and technical experts to identify, protect, detect and respond to the impact of known and unknown threats, continuously assessing security controls and addressing the remaining residual risks. The FEC has also entered into an inter-agency agreement with DHS to participate in the Federal Continuous Diagnostics and Mitigation program. By partnering with DHS, the FEC is able to leverage that agency's cybersecurity resources, which would be cost prohibitive for an agency of the FEC's size to procure independently.

Following NIST guidelines and the Commission's own prioritization and resources, the first wave of projects undertaken to enhance to FEC's security architecture focused on the "protect" function to hinder threat actors from gaining access to FEC IT assets and data. The initial project included strengthening the FEC's perimeter defenses using Software Defined Perimeter and protecting users from inadvertently infecting their systems by using a robust end-point solution. The FEC has additionally implemented tools and services that:

- Detect and/or identify malicious behavior activities.
- Continuously log the entire FEC network flow, which allows OCIO staff to track and identify egress and ingress traffic.
- Identify critical, high and medium vulnerabilities to update/patch for mitigating FEC computer systems.
- Implemented email controls to filter and deliver only trusted emails.

## **3. Adopt Cloud First Initiative**

The third pillar of our strategy is to adopt a cloud first initiative for security, accessibility and recoverability. Hosting systems and data in a cloud environment allows the FEC to utilize our cloud service providers' significant resources that are dedicated to maintaining the highest level of security. In addition, by utilizing the cloud service providers' robust disaster recovery solutions, the FEC eliminates the need to maintain physical disaster recovery sites, which are costly to maintain and secure. The FEC has already completed the migration of its largest database, the campaign finance database, and its website to a cloud environment. The FEC's new website, launched in May 2017, uses FedRAMP Authorized cloud services, which provides a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services.

## **4. Build a Cybersecurity Culture**

The fourth pillar of this strategy is to build a cybersecurity culture. For this comprehensive cybersecurity strategy to be successful, the OCIO will partner with Federal agencies and industry leaders to leverage best practices for our IT workforce. The first line of defense in maintaining the protection and integrity of the agency's network is the ongoing education of employees about their role in identifying and preventing malicious activities. The Commission's main target will be recruiting and training talent with cybersecurity expertise. In April 2019, the FEC entered into a partnership with the Partnership for Public Service to

participate in the Cybersecurity Talent Initiative. This selective, cross-sector program, which provides loan forgiveness to top bachelors and masters graduates around the United States in exchange for at least two-years' service at a Federal agency, addresses the immediate cybersecurity talent deficiency faced by Federal government agencies by attracting service-minded individuals to government who might not otherwise have applied.

In partnership with DHS and cybersecurity partners, we continue to evaluate emerging threat vectors and focus on efforts to enhance both our defenses and our mitigation strategies as we deal with potential intrusion attempts on a regular basis.

17. *In the Chair's opening remarks at the February 7, 2019 open meeting, the Chair noted that the Commission has "hundreds of cases on our enforcement docket, 326 to be precise, over 50 already imperiled by a looming statute of limitations."*

- a. *How many cases are on the enforcement docket as of the date of this letter?*

As of May 1, 2019, OGC-Enforcement's docket includes 289 cases.

- b. *How many cases are imperiled by a looming statute of limitations?*

Of the 289 cases on the enforcement docket, 45 cases have at least some activity that is beyond the statute of limitations or will be before May 1, 2020. Please note that cases might also include later activity that will remain within the statute of limitations and that some cases are subjects of tolling agreements.

- c. *How does the Commission plan to address the hundreds of cases?*

The Commission plans to address the current caseload through both increased productivity and the continued implementation of certain systemic reforms. Thus far in the current year, the Commission has held meetings in Executive Session approximately two times a month (almost every other week), and has considered, on average, 27.5 enforcement cases per agenda. Frequently, Executive Session meetings continue on Thursdays after the conclusion of Public Sessions. As noted below, the Commission intends to pursue a more aggressive meeting schedule for the remainder of the year.

The Commission prioritizes for immediate consideration in Executive Session any matters imperiled by an impending statute of limitations, as well as matters that allege violations of the foreign national prohibition, as discussed in response to question 41. Similarly, the OGC Enforcement Division also prioritizes for assignment and review any such matters.

The Commission also receives detailed quarterly status reports from the Enforcement Division that show the progress made on case files. The reports include data on OGC's timeliness for activating cases and processing them through the various stages of the enforcement

process. The reports also highlight matters that are imperiled by the statute of limitations. These status reports are automatically calendared on Executive Session agendas where commissioners can ask questions on specific matters or on overall efficiency and management issues.

In December 2018, the Commission revised two procedures that have improved efficiency: (1) the Reports Analysis Division Review and Referral Procedures, and (2) the Enforcement Priority System’s rating system (used by OGC to prioritize and activate MURs). These changes will allow more low-priority matters to be handled through Alternative Dispute Resolution, educational programs, or streamlined Enforcement Priority System Dismissals. Shifting these matters away from the Enforcement Division’s “active” docket will allow for more Enforcement Division resources to be devoted to complex, high-priority Matters Under Review. Additionally, in order to increase the efficiency of the EPS Dismissal process, the Commission also in December 2018 instructed the Enforcement Division to exclusively use “short-form” reports (two to three page summaries) in the EPS Dismissal process rather than more expansive analyses.<sup>9</sup>

*d. How often does the Commission plan to meet for the remainder of 2019 in Executive Session to dispose of these cases?*

Historically, the Commission has met in Executive Session on Tuesdays, sometimes with a continuation on Thursdays after the conclusion of the Public Session. The Commission is committed to adopting a more aggressive schedule for the rest of the year to address the cases on the enforcement docket. The Commission has already scheduled meetings on the following dates:

May 7, 9, 21 and 23  
June 4, 6, 18 and 20.

At its next Public Session on May 9, 2019 the Commission intends to supplement its schedule to reflect its commitment to adopt a more aggressive schedule for the rest of the year. The Commission will provide the schedule for the full calendar year to the Committee immediately thereafter.

*18. How many Matters Under Review are considered in a typical Executive Session?*

Reviewing the agendas for Executive Sessions from January 1, 2015 through April 9-11, 2019, the Commission considers an average of approximately 18 enforcement cases per Executive Session. This average includes several categories of enforcement cases are placed on Executive Session agendas, including Matters Under Review, RAD Referrals, Audit Referrals, and Pre-MURs, as discussed in more detail in response to question 25.<sup>10</sup> This average does not

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<sup>9</sup> For additional information about the Enforcement Priority System, see the response to question 19 below.

<sup>10</sup> For purposes of calculating the average number of cases considered in an Executive Session, each enforcement matter on the agenda was counted separately regardless of whether it was presented collectively in one General Counsel Report. For example, if a single First General Counsel’s report placed on the agenda collectively

include matters that were designated on the agenda as held over at the request of the Commissioner, nor does it include matters that were designated on the agenda as calendared for status inquiries.

19. *According to the “Status of Enforcement—Fiscal Year 2018” memorandum from the Office of General Counsel, there was a caseload of 317 cases, including 113 “inactive” cases and 204 “active” cases. What distinguishes an “inactive” case from an “active” case?*

Any complaint, referral, or *sua sponte* submission received by the Commission is initially designated as “inactive.” A case is “activated” when the Associate General Counsel for Enforcement assigns it to an OGC Enforcement Division attorney.

This assignment happens after OGC completes the intake process handled by OGC Enforcement Division’s Complaints Examination and Legal Administration team. In brief, this process involves notification of the respondents; receipt of responses from the respondents; and evaluation of the complaint and response using objective criteria approved by the Commission under its Enforcement Priority System (EPS). Respondents have 15 days to respond to a complaint pursuant to FECA; however, a respondent may request an extension of up to 30 days.<sup>11</sup> Matters are activated within an average of 50 days of the date OGC receives the last response.

Some matters are disposed of without ever being “activated;” these cases are either transferred to the Alternative Dispute Resolution Office or, if the EPS rating indicates the matter does not warrant the further use of Commission resources, OGC generally uses a streamlined EPS dismissal process to recommend the Commission dismiss the matter.

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analyzed complaints in two Matters Under Review and one RAD Referral, that report represented three cases on the agenda.

<sup>11</sup> FECA, § 309(a), *codified at 52 U.S.C. § 30109(a).*

20. According to the “Status of Enforcement- Fiscal Year 2018” memorandum from the Office of General Counsel to the Commission, of First General Counsel’s Reports Pending with the Commission, numerous cases—including one dating back to 2012—have been pending for years and have been “held over” on multiple dates.

<i>Receipt</i>	<i>Assigned</i>	<i>Circ.</i>	<i># of Days Receipt to Circ.</i>	<i># Days Assigned to Circ.</i>	<i># of Days Receipt to Close of Quarter</i>	<i># of Days Circ. to Close of Quarter</i>	<i>Held Over Dates</i>
06/20/12	10/09/12	03/10/14	628	517	2293	1665	02/10/15; 03/09/15; 03/17/15; 04/21/15; 08/11/15; 09/15/15; 11/17/15; 12/10/15; 08/15/17; 09/12/17;
02/11/14	07/02/14	10/28/14	259	118	1692	1433	04/12/16; 04/26/16; 01/24/17; 01/25/17; 09/06/18
02/21/14	07/02/14	10/28/14	249	118	1682	1433	04/12/16; 04/26/16; 01/24/17; 01/25/17; 09/06/18
03/27/14	07/02/14	10/28/14	215	118	1648	1433	04/12/16; 04/26/16; 01/24/17; 01/25/17; 09/06/18
05/21/14	10/07/14	02/04/15	259	120	1593	1334	06/28/16; 01/24/17
03/31/15	06/29/15	05/12/17	773	683	1279	506	11/7/17; 11/8/17; 11/14/17; 11/16/17; 9/25/18; 10/9/18; 10/11/18
12/04/14	06/04/15	11/13/15	344	162	1396	1052	11/15/16; 12/06/16; 12/08/16; 01/24/17; 01/25/17; 05/22/18; 07/07/18
05/06/16	09/01/16	01/09/17	248	130	877	629	06/06/17; 12/12/17
03/31/15	04/01/16	02/08/17	680	313	1279	599	9/25/17; 10/11/18; 9/25/18; 10/9/18; 10/11/18;
02/23/15	06/24/15	03/06/17	742	621	1315	573	10/11/17; 10/12/17; 10/24/17; 10/26/17; 11/7/17; 11/8/17; 11/14/17; 11/16/17; 25/18; 10/9/18; 10/11/18

*Why are some enforcement cases held over—sometimes for years—with out resolution?*

A matter is considered held over when the Chair places it on the agenda for a Commission meeting, but at least one Commissioner requests that it not be considered—or if considered, that it not be voted on—at that meeting.

Commissioners are not required to give reasons for requests to hold matters over. However, reasons provided in the past have included the following:

- Commissioners have held matters over pending completion of General Counsel’s Reports in, or Commission consideration of, other matters that involve common respondents or common legal issues.
- Commissioners have held matters over pending resolution of the same or a related legal issue in pending litigation.
- Due to the press of other business, Commissioners have held matters over because they are not prepared to proceed on the matters at the meeting for which it has been calendared.
- Commissioners have held matters over to permit more time to consider points made in Commission discussion of the matter before voting.
- Commissioners have held matters over to permit more time for negotiations regarding the text of the Commission’s Factual and Legal Analysis in the matter in an attempt to achieve consensus and avoid closing the matter due to disagreement.

Some Commissioners do not agree that holding over matters for lengthy periods of time is warranted.

21. *From January 1, 2012 to the present, how many enforcement actions were initiated as a result of:*

- a. Complaint-generated matters?*
- b. Internally-generated matters?*
- c. External referrals?*
- d. Sua sponte submissions?*

Year	Complaints	Internal Referrals	External Referrals	<i>Sua Sponte</i>	Total
2012	167	85	1	23	276
2013	35	30	2	12	79
2014	135	29	0	13	177
2015	68	35	1	7	111
2016	190	14	0	12	216
2017	78	46	0	5	129
2018	223	31	3	11	268
2019*	31	0	1	3	35

\* Data covers January 1 to March 31, 2019

22. *How many enforcement cases, organized by election cycle, are still unresolved and not yet closed?*

<b>Election Cycle</b>	<b>Active</b>	<b>Inactive</b>	<b>Total</b>
2012	4	0	4
2014	7	0	7
2016	93	16	109
2018	96	63	159
2020	4	6	10

\* Data is current as of May 1, 2019.<sup>12</sup>

23. *How many Administrative Fines cases has the Commission closed since January 1, 2012?*

Between January 1, 2012 and April 1, 2019, the Commission closed 796 Administrative Fines cases.

24. *Does the Commission plan to expand the Administrative Fines Program to cover other reporting violations, as authorized by Public Law 113-72?*

Since at least 2014, the issue of whether to expand the Administrative Fines Program to cover other reporting violations has been considered by the Commission.

The Commission published a Notice of Availability on March 30, 2015 in which it sought public comment on a petition for rulemaking asking the Commission to open a rulemaking to expand the Administrative Fines Program.

Following Regulations Committee meetings, formal and informal discussions, and after reviewing the comments received on the petition, the Commission has not decided whether to open a rulemaking on the issue of expanding the Administrative Fines Program.

25. *How many Matters Under Review has the Commission closed since January 1, 2012?*

Matters Under Review are a type of administrative enforcement matter handled by the Commission's Office of General Counsel pursuant to section 309 of FECA.<sup>13</sup> External complaints filed with the Commission are designated Matters Under Review (MURs) and

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<sup>12</sup> As to the MURs that reflect 2014-2016 election cycle activity, almost all of those matters have tolling agreements or contain alleged continuing violations.

<sup>13</sup> FECA, § 309, *codified at 52 U.S.C. § 30109.*

assigned a MUR number upon receipt. MURs may be designated by the Commission itself; for instance, if the Commission determines to sever an allegation or a respondent from an existing MUR and pursue a case separately, it will open a new MUR, sever the portions of the case from the existing MUR, and transfer them to the new MUR.

There are also preliminary types of enforcement matters, identified in response to question 21(b)-(d), that may also become MURs and are assigned MUR numbers if the Commission determines to “open a MUR” and pursue the matter. These case types are RAD referrals, Audit Referrals, and Pre-MURs (*sua sponte* submissions or external referrals), and other internally-generated matters.

Consistent with the foregoing, between January 1, 2012 and April 1, 2019 the Commission closed 839 Matters Under Review through the ordinary enforcement process described in section 309 of FECA. It also closed an additional 32 Matters Under Review on OGC’s docket by referring them to ADRO for resolution.

26. *How many and what percentage of the Matters Under Review in Question 25 were resolved exclusively on a tally vote?*

Of the 839 Matters Under Review identified in question 25, 308 MURs (or 36.7%) were resolved exclusively on tally. Some cases are resolved on tally after they are scheduled for an Executive Session.

27. *For purposes of this question, assume a “deadlocked vote” is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of Matters Under Review considered in Executive Session since January 1, 2012 and that are now closed, how many and what percentage of the MURs included at least one deadlocked vote of the Commission during Executive Session? Please provide, categorized by year since 2012, the count and percentages. Please also provide the MUR number for each MUR that included at least one deadlocked vote.*

Using a Commission vote database maintained by the Commission’s Secretary, an Enforcement Division case management database, and the Enforcement Query System on the FEC’s website, all MURs (as defined in response to question 25 above) that were considered by the Commission in Executive Session after January 1, 2012 and that were closed as of April 1, 2019 were examined. 531 such MURs were identified. 269 of these MURs, or 50.6%, had at least one vote after January 1, 2012, with no position receiving the support of four or more Commissioners, which the Commission has typically called a “split vote.” Split votes are most often 3-3 or 2-2, and can also be any other combination that lacks four or more votes in the affirmative or negative.

The Commission does not consider some of the votes that the question considers to be “deadlocked” to be split votes. FECA requires four Commissioners’ votes for certain decisions, without regard to how many Commissioners are currently serving. Consequently, the

Commission views any position supported by four or more Commissioners as a Commission decision, and not as a “deadlocked” vote.<sup>14</sup> The question seeks information about cases where there were not four *affirmative* votes. In one such case, for example, an initial motion to dismiss the case as a matter of prosecutorial discretion was defeated by a vote 1-5, and the case then proceeded through multiple unanimous votes through reason-to-believe and probable-cause-to-believe findings, and was resolved by a conciliation agreement with admissions and a substantial civil penalty.<sup>15</sup> The initial vote of 1-5 lacks four affirmative votes and is therefore responsive to this question. The Commission, however, would not consider this case an example of a “deadlocked” case. As a result of conferring with House Administration Committee staff, FEC staff agreed to compile the data related to cases with votes like this and present it separately in footnotes in response to questions 27 and 28.<sup>16</sup>

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<sup>14</sup> Congressional Research Service did not consider four or more negative votes to be a deadlocked vote in its work in 2009 or 2015. *See* CRS, “The Federal Election Commission: Enforcement Process and Selected Issues for Congress,” R44319, at 10 n.44 (Dec. 22, 2015) and CRS, “Deadlocked Votes Among Members of the Federal Election Commission (FEC): Overview and Potential Considerations for Congress,” R40779, at 5 & 10-11 (Oct. 6, 2009).

<sup>15</sup> *See* MUR 6394 (Pingree for Congress) <https://www.fec.gov/data/legal/matter-under-review/6394/>.

<sup>16</sup> If additional cases with votes that lack four affirmative votes after January 1, 2012, are also considered responsive to question 27, an additional 12 MURs would be responsive, for a total of 281 or 52.9 %.

The following chart breaks down this data by calendar year. Some MURs are subject to one vote in one Executive Session, while others can be considered in multiple Executive Sessions that might fall in different years. The data below include each MUR considered by the Commission in Executive Session in each of the calendar years, so some MURs appear more than once.

Calendar Year	Closed MURs with At Least One Split Vote Considered in Executive Session	Closed MURs Considered in Executive Session	Percentage (At Least One Split/ Closed MURs in Exec.)
2012	27	61	44.3 %
2013 <sup>17</sup>	41	93	44.1 %
2014 <sup>18</sup>	23	61	44.3 %
2015 <sup>19</sup>	53	91	58.2 %
2016 <sup>20</sup>	49	75	65.3 %
2017 <sup>21</sup>	39	72	54.2 %
2018	51	86	59.3 %
1/1-3/31/ 2019	16	20	80.0 %
Total for Entire Period	269	531	50.6 %

Additional comments on this question by commissioners are attached. (See Attachments A and B.)

28. *For purposes of this question, assume a “deadlocked vote” is an equally divided vote of the Commission or any other vote that lacks four affirmative votes. Of Matters Under Review considered in Executive Session since January 1, 2012 and that are now closed, how many and what percentage of the MURs deadlocked on all votes taken during Executive Session, other than a vote to close the file and send the appropriate letter(s)? Please provide, categorized by year since 2012, the count and percentages. Please also provide the MUR numbers and MUR subject of the cases*

<sup>17</sup> If votes lacking four affirmative votes were included, 2013’s Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by one to 42, and the percentage would increase to 45.2 %.

<sup>18</sup> If votes lacking four affirmative votes were included, 2014’s Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by two to 25, and the percentage would increase to 41.0%.

<sup>19</sup> If votes lacking four affirmative votes were included, 2015’s Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by seven to 60, and the percentage would increase to 65.9 %.

<sup>20</sup> If votes lacking four affirmative votes were included, 2016’s Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by three to 52, and the percentage would increase to 69.3 %.

<sup>21</sup> If votes lacking four affirmative votes were included, 2017’s Closed MURs with At Least One Deadlock Vote Considered in Executive Session would increase by four to 43, and the percentage would increase to 59.7%.

*that deadlocked on all votes taken in Executive Session (other than a vote to close the file and send the appropriate letter(s)).*

Of the 531 MURs that were considered by the Commission in Executive Session after January 1, 2012 and that were closed as of April 1, 2019, 84 of these MURs or 15.8% had split votes (as defined in response to question 27) on all votes taken during the executive session other than a vote to close the file.<sup>22</sup>

<b>Calendar Year</b>	<b>Closed MURs with All Split Votes Considered in Executive Session</b>	<b>Total Closed MURs Considered in Executive Session</b>	<b>Percentage (All Split/Closed MURs in Exec.)</b>
2012	2	61	3.3 %
2013	12	93	12.9 %
2014	6	61	9.8 %
2015 <sup>23</sup>	19	91	20.9 %
2016 <sup>24</sup>	12	75	16.1 %
2017	12	72	16.7 %
2018	24	86	27.9 %
1/1-3/31/2019	11	20	55.0 %
<b>Total for Entire Period</b>	<b>84</b>	<b>531</b>	<b>15.8 %</b>

The MURs responsive to question 28 consist of matters where the votes on all substantive issues were split votes, other than votes to close the files. These 84 “all split” MURs were also responsive to question 27, as MURs with at least one split vote.

Additional comments on this question by commissioners are attached. (See Attachments A and B.)

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<sup>22</sup> If all of the 839 MURs that have been closed from January 1, 2012, to April 1, 2019, are considered, and if additional cases with votes without four affirmative votes after January 1, 2012 are also considered, an additional 5 MURs would be responsive to question 28, for a total of 89 or 16.8%.

<sup>23</sup> If votes lacking four affirmative votes were included, 2015’s Closed MURs with All Deadlock Votes Considered in Executive Session would increase by three to 21, and the percentage would increase to 23.1%.

<sup>24</sup> If votes lacking four affirmative votes were included, 2016’s Closed MURs with All Deadlock Votes Considered in Executive Session would increase by two to 14, and the percentage would increase to 18.7%.

29. *Once the Commission deadlocks on a recommendation from the Office of General Counsel, is it the Commission’s position that the Office of General Counsel should not make the same recommendation in an analogous case?*

Under FECA’s framework, the General Counsel recommends to the Commission whether or not it should find reason to believe or probable cause to believe that a respondent has committed, or is about to commit, a violation.<sup>25</sup> In making these recommendations, the General Counsel will consider the factual and legal issues of the case. When analyzing the legal issues of a case, the General Counsel considers, *inter alia*, FECA and Commission regulations, case law, MUR precedent, and Commission Advisory Opinions.

The General Counsel has not considered Commission split votes, that is where there are neither four or more votes for or four or more against a recommendation, to be binding MUR precedent. Therefore, after a split vote, the General Counsel may make the same recommendation, either to find a violation or to find no violation, in an analogous case.<sup>26</sup> Commissioners have divided views on whether such split votes should be considered binding MUR precedent.

Consistent with the explanation given in our answers to questions 27 and 28, the Commission generally does not consider a proposition that is rejected by four or more Commissioners to be a “deadlock vote.” Thus, if the Commission rejects a recommendation by, say, a vote of 2 to 4 or 1 to 5, that will likely affect the General Counsel’s recommendation in an analogous case.

30. *Since the Supreme Court’s decision in Citizens United, how many times has the Commission found a violation of the coordination regulations? Please provide the Matter Under Review numbers.*

Since the Supreme Court’s decision in *Citizens United*, the Commission has not entered into pre-probable cause conciliation or found probable cause to believe that a respondent violated the coordination regulations.

The Commission found reason to believe that respondents violated the coordination regulations in one case, but ultimately determined that the violation was not worth pursuing. In MUR 6721 (Beth Steele/Mark Long), the Commission found reason to believe that candidate Todd Long and his committee, Todd Long for Congress, coordinated automated telephone calls with Beth Steele and Women Advocating Respect in violation of 11 C.F.R. § 109.21, resulting in Long and the Committee knowingly accepting an excessive in-kind contribution in violation of FECA.<sup>27</sup> After an investigation, the Office of General Counsel was unable to conclusively

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<sup>25</sup> FECA, § 309(a)(3), codified at 52 U.S.C. § 30109(a)(3); see also 11 C.F.R. §§ 111.7, 111.8, 111.9, 111.16.

<sup>26</sup> See *Common Cause v. FEC*, 842 F.2d 436, 449 at n.32 (D.C. Cir. 1998)(noting that a split-vote decision “is not binding legal precedent or authority in future cases”).

<sup>27</sup> FECA, § 315(f), codified at 52 U.S.C. § 30116(f). See FEC Notification and Factual and Legal Analysis to Todd Long (Aug. 21, 2015), available at <https://www.fec.gov/files/legal/murs/6721/18044454714.pdf>.

determine whether the robocalls were coordinated and also determined that any amount in violation was likely no more than \$700 and therefore of a *de minimis* amount; the Office therefore recommended taking no further action. The Commission approved the recommendation and closed the file on November 26, 2018.

In addition, the Commission has found reason to believe a violation occurred in another matter which remains pending.

*31. Since January 1, 2012, how many enforcement cases has the FEC pursued through litigation after attempting conciliation?*

Under 52 U.S.C. § 30109(a)(6), the Commission may, upon an affirmative vote of four of its members, institute a civil action in federal district court to remedy a violation of FECA if, among other things, the Commission was first unable to correct or prevent that violation by informal methods of conference, conciliation, and persuasion. Since January 1, 2012, the Commission has litigated all or part of six cases that it filed under section 30109(a)(6) after attempting conciliation. The Commission filed one of those cases prior to January 1, 2012, but continued to pursue the case after that date. The other five cases were filed by the Commission after January 1, 2012. Two of those cases remain active today.

1. *FEC v. Craig for U.S. Senate, et al.*, 12-958 (D.D.C. filed Jun. 11, 2012) (MUR 6128)
2. *FEC v. Kazran, et al.*, 10-1155 (M.D. Fl. filed Dec. 17, 2010) (MUR 6054)
3. *FEC v. O'Donnell, et al.*, 15-17 (D. Del. filed Jan. 5, 2015) (MUR 6380)
4. *FEC v. Johnson, et al.*, 15-439 (D. Utah filed Jun. 19, 2015) (MUR 6850) (active)
5. *FEC v. Lynch, et al.*, 15-81732 (S.D. Fl. filed Dec. 18, 2015) (MUR 6498)
6. *FEC v. Rivera*, 17-22643 (S.D. Fl. filed July 14, 2017) (MUR 6655) (active)

*32. What is the current relationship between the FEC and the Department of Justice regarding enforcement matters? Do FEC enforcement staff have the ability to consult with Department of Justice staff where appropriate?*

FECA provides that the Commission “shall have exclusive jurisdiction with respect to the civil enforcement” of FECA and the presidential public funding provisions of Chapters 95 and 96 of Title 26. Jurisdiction for criminal enforcement of the Act and Chapter 95 and 96 of Title 26 resides in the Department of Justice (DOJ). The Commission and DOJ have concurrent jurisdiction over knowing and willful violations of the Act.<sup>28</sup>

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<sup>28</sup> FECA, §§ 306(b)(1) & 309(a)(5)(C), codified at 52 U.S.C. §§ 30106(b)(1) & 30109(a)(5)(C).

In 1977, the Commission and DOJ entered into a Memorandum of Understanding (MOU) relating to their respective law enforcement jurisdiction and responsibilities.<sup>29</sup> The MOU remains the primary guidance/procedural agreement used by the Commission to assist in collaboration and consultation efforts (including referrals) between the Commission and DOJ.

The FEC and DOJ consult in a number of ways, but most frequently through the sharing of investigative materials. For instance, upon written request and subject to Commission approval, the FEC will share with DOJ documents from its enforcement files. In turn, DOJ will (subject to Grand Jury secrecy rules and other applicable laws) provide the FEC investigative materials from parallel matters, *e.g.*, FBI 302s. DOJ typically shares such information at the end of a DOJ prosecution or after DOJ determines not to prosecute a case. The initial point of contact for consultation on parallel matters between the FEC and DOJ is usually through the General Counsel or Associate General Counsel for Enforcement and DOJ's Public Integrity Section.

The Commission also routinely makes witnesses available to assist in DOJ prosecutions. Typically, the FEC witness provides testimony concerning the contents of disclosure reports filed with the Commission.

Finally, DOJ sometimes requests that the Commission hold particular Matters Under Review in abeyance pending the conclusion of a related DOJ investigation. These requests must be submitted in writing to the General Counsel or the Associate General Counsel, and the Commission votes to decide whether to grant the request based on OGC's recommendation. In deciding whether to grant the request, the Commission considers the amount of time remaining on the relevant statute of limitations, whether the Commission's investigation would benefit from accessing the DOJ file at the end of the DOJ investigation, and whether a parallel civil investigation may harm the criminal investigation by, for instance, creating conflicting witness statements. Typically such requests are granted for a set term, and then DOJ is asked to resubmit the abeyance request if it seeks continued abatement. The extension request is analyzed under the same factors as the original request.

33. *How many rulemakings has the Commission completed since January 1, 2012, excluding Civil Monetary Penalties Inflation Adjustments? Please provide a brief summary of each new rule.*

The Commission adopted Final Rules in ten rulemakings since January 1, 2012.

1. REG 2013-05 (Administrative Fines Extension): Revised regulations to extend the Administrative Fines Program through the new statutory expiration date and to delete a provision that required administrative fines to be paid by check or money order.  
79 Fed. Reg. 3302 (Jan. 21, 2014).

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<sup>29</sup> See 43 Fed. Reg. 5441 (Feb. 8, 1978).

2. REG 2013-04 (Technical Amendments to 2013 CFR): Revised various sections of the Commission's regulations to make correcting amendments.  
79 Fed. Reg. 16661 (Mar. 26, 2014).
3. REG 2014-07 (Removal of Aggregate Contribution Limits (*McCutcheon*)): The Commission issued an Interim Final Rule followed by a Final Rule that revised the Commission's regulations to remove limits on the aggregate amounts that an individual may contribute to federal candidates and political committees in each two-year election cycle in response to the Supreme Court decision in *McCutcheon v. FEC*.  
*See* Interim Final Rule, 79 Fed. Reg. 62335 (Oct. 17, 2014); Final Rule, 79 Fed. Reg. 77373 (Dec. 24, 2014).
4. REG 2010-01 Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations (*Citizens United*): Revised regulations on corporate and labor organization expenditures, independent expenditures, and electioneering communications in response to the Supreme Court's decision in *Citizens United v. FEC*.  
79 Fed. Reg. 62797 (Oct. 21, 2014).
5. REG 2014-08 (Technical Corrections): Revised various sections of the Commission's regulations to make correcting amendments.  
79 Fed. Reg. 77841 (Dec. 29, 2014).
6. REG 2015-06 (Technical Amendments to 2015 CFR): Revised various sections of the Commission's regulations to make correcting amendments.  
81 Fed. Reg. 34861 (June 1, 2016).
7. REG 2016-04 (Technical Amendments to 2016 CFR): Revised various sections of the Commission's regulations to make correcting amendments.  
81 Fed. Reg. 94238 (Dec. 23, 2016).
8. REG 2017-02 (Change of Address; Technical Amendments): Revised various sections of the Commission's regulations to reflect the change in location of the Commission's offices.  
82 Fed. Reg., 60852 (Dec. 26, 2017).
9. REG 2014-02 (Reporting Multistate Independent Expenditures and Electioneering Communications): Revised regulations to address reporting of independent expenditures and electioneering communications that relate to presidential primary elections and are publicly distributed in multiple states but that do not refer to any particular state's primary election.  
83 Fed. Reg. 66590 (Dec. 27, 2018).
10. REG 2018-04 (Senate Filing): Congress amended FECA to require all mandated reports, designations, and notices to be filed with the Commission. Previously, Senate candidates and certain political committees were required to file such reports, designations, and

notices with the Secretary of the Senate. During its Open Meeting on April 25, 2019, the Commission voted to approve an Interim Final Rule revising its regulations to implement this new statutory requirement.

The Commission published three Notices of Disposition since January 1, 2012, two of which are related, as described below.

1. REG 2014-05 (Definition of “Federal Office”): The Commission issued a Notice of Availability seeking comment on a petition for rulemaking submitted by National Convention PBC. The petition asked the Commission to revise its regulation defining “federal office” to include delegates to a constitutional convention.  
79 Fed. Reg. 59459 (Oct. 2, 2014).
  - a. After reviewing the comments received on the petition, the Commission concluded its consideration by voting to issue a Notice of Disposition announcing its decision not to open a rulemaking. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=310944>).  
79 Fed. Reg. 75455 (Dec. 18, 2014).
2. REG 2014-06 (Candidate Debates): The Commission issued a Notice of Availability seeking comment on a petition for rulemaking submitted by Level the Playing Field. The petition asked the Commission to revise its regulation on candidate debates to prohibit debate staging organizations from using a minimum polling threshold as a criterion for determining who may participate in presidential and vice presidential candidate debates.  
79 Fed. Reg. 68137 (Nov. 14, 2014).
  - a. After reviewing the comments received on the petition, the Commission considered whether to open a rulemaking in response to the petition. During its Open Meeting on July 16, 2015, the Commission voted on two motions. The first motion was to open a rulemaking. That motion failed to receive the required minimum four affirmative votes.<sup>30</sup> The second motion was to issue a Notice of Disposition announcing the Commission’s decision not to open a rulemaking. That motion passed, so the Commission issued the Notice of Disposition.  
80 Fed. Reg. 72616 (Nov. 20, 2015).
  - b. After the Commission issued its Notice of Disposition in this matter, the petitioner sued the Commission over its decision not to open a rulemaking. The United States District Court for the District of Columbia ordered the Commission to reconsider its decision. The Commission then reconsidered the matter and again decided not to open a rulemaking, voting to approve a Supplemental Notice of Disposition.<sup>31</sup> 82 Fed. Reg. 15468 (Mar. 29, 2017). Subsequently, the court

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<sup>30</sup> Commissioners Ravel and Weintraub voted affirmatively for the motion. Commissioners Goodman, Hunter, Petersen, and Walther dissented. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=341903>).

<sup>31</sup> Commissioners Goodman, Hunter, Petersen, and Walther voted affirmatively for the motion. Commissioners Ravel and Weintraub dissented. *See* Certification of Vote (available

reviewed the Commission's explanation of its decision not to open a rulemaking in response to the petition and upheld the Commission's decision. *See Level the Playing Field v. FEC*, Case No. 15-cv-1397 (TSC), 2019 WL 1440883, at \*19 (D.D.C. Mar. 31, 2019). On April 22, 2019, the plaintiff filed a notice of appeal to the United States Court of Appeals for the District of Columbia Circuit.

Since January 1, 2012, the Commission has issued five Interpretive Rules, Policy Statements or amendments.

1. Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements: Clarified Commission's interpretation of the regulatory requirement that political committees report the full name and address of each person to whom they make expenditures or other disbursements aggregating more than \$200 per calendar year, or per election cycle for authorized committees, and the date, amount, and purpose of such payments.  
78 Fed. Reg. 40625 (July 8, 2013).
2. Policy Statement on Program for Requesting Consideration of Legal Questions by the Commission: Revised a program providing for a means by which persons and entities may have a legal question considered by the Commission earlier in both the report review process and the audit process to provide alternative means to file a request with the Commission.  
78 Fed. Reg. 63203 (Oct. 23, 2013).
  - a. Amendment: The Commission further revised its program for requesting its consideration of legal questions by (1) clarifying that requests for consideration be submitted to the Commission Secretary to ensure that such requests are processed in a timely manner, and (2) building five business days into the program to allow time for the informal resolution of matters.  
81 Fed. Reg. 29861 (May 13, 2016).
3. Interpretive Rule on Date of Political Party Nominations of Candidates for Special Primary Elections in New York: Clarified the Commission's interpretation of its rules for determining the date of a special primary election as those rules apply to nominations conducted under New York statutes that provide for a candidate to be nominated for a special election by a vote of a state or county party committee.  
78 Fed. Reg. 76032 (Dec. 16, 2013).
4. Policy Statement on Disclosure of Certain Documents in Enforcement and Other Matters: Announced a policy on placing certain documents on the public record in enforcement, administrative fines, and alternative dispute resolution cases, as well as administrative matters.  
81 Fed. Reg. 50702 (Aug. 2, 2016).

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at: <https://sers.fec.gov/fosers/showpdf.htm?docid=357019>).

34. *Please provide a brief summary, including the current status of Commission action, for each Advance Notice of Proposed Rulemaking (ANPRM) that the Commission has opened or reopened since January 1, 2012. In the summary, please provide the status of the Commission's deliberations on these matters, including but not limited to whether and when it expects to take further action on each ANPRM.*

The Commission has published three Advance Notices of Proposed Rulemaking since 2012.

1. REG 2013-01 (Technological Modernization): Sought comment on whether and how the Commission should revise its regulations to reflect technological advances, on the relevance of industry standards in processing electronic transactions to such revisions, and on the methods used by political committees and other persons to engage in electronic transactions and to keep records of such transactions.

78 Fed. Reg. 25635 (May 2, 2013).

- a. After reviewing the comments received in response to the Advance Notice of Proposed Rulemaking, the Commission decided to open a rulemaking to consider revising many of its regulations.

*See Notice of Proposed Rulemaking, 81 Fed. Reg. 76416 (Nov. 2, 2016).*

2. REG 2014-01 (Earmarking, Affiliation, Joint Fundraising, Disclosure, and Other Issues (McCutcheon)): Sought comment on whether the Commission should revise its regulations on earmarking, affiliation, joint fundraising, or disclosure to prevent circumvention of contribution limits in light of the Supreme Court's decision in *McCutcheon v. FEC*, which held that the aggregate biennial limit on contributions from individuals was unconstitutional.

79 Fed. Reg. 62361 (Oct. 17, 2014).

- a. On February 11, 2015, the Commission held a hearing and heard testimony from witnesses on the issues raised in the Advance Notice of Proposed Rulemaking.

*See Hearing Transcript (available at:*

<https://sers.fec.gov/fosers/showpdf.htm?docid=329748>)

- b. After reviewing the comments and witness testimony received in response to the Advance Notice of Proposed Rulemaking, the Commission considered whether to open a rulemaking to consider revising its regulations on earmarking, affiliation, joint fundraising, or disclosure. On May 21, 2015, the Commission voted 3 to 3 on a motion to open a rulemaking in this matter.<sup>32</sup>

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<sup>32</sup> Commissioners Ravel, Walther, and Weintraub voted affirmatively for the motion. Commissioners Goodman, Hunter, and Petersen dissented. *See Certification of Vote on Motion To Open a Rulemaking in Response to Comments and Testimony On The McCutcheon v. FEC ANPRM* (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=349376>).

3. REG 2011-02 (Internet Disclaimers): The Commission issued an Advance Notice of Proposed Rulemaking in October of 2011, seeking comment on whether to revise its regulation on disclaimer requirements for certain internet communications.  
*76 Fed. Reg. 63567 (Oct. 13, 2011).*
  - a. The Commission re-opened the comment period on the Advance Notice of Proposed Rulemaking in October of 2016 and in October of 2017.  
*See 81 Fed. Reg. 71647 (Oct. 18, 2016) and 82 Fed. Reg. 46937 (Oct. 10, 2017).*
  - b. After considering the comments received during all three comment periods, the Commission decided to open a rulemaking to consider revising its disclaimer regulation with respect to certain internet communications.  
*See Notice of Proposed Rulemaking, 83 Fed. Reg. 12864 (Mar. 26, 2018).*
  - c. The Commission has considered the written comments submitted in response to the March 2018 Notice of Proposed Rulemaking and witness testimony it received in connection with its June 2018 hearing. It is not at this time clear whether there will be four affirmative votes to adopt a final rule.

35. *Please provide a brief summary, including the current status of Commission action, for each Notice of Proposed Rulemaking (NPRM) that the Commission has opened or reopened since January 1, 2012. In the summary, please provide the status of the Commission's deliberations on these matters, including but not limited to whether and when it expects to take further action on each NPRM.*

In addition to the Notices of Proposed Rulemaking issued in the course of final rulemaking matters, detailed in the answer to question 33, the Commission has issued three Notices of Proposed Rulemaking since January 1, 2012.

1. REG 2012-02 (Limited Liability Partnerships): The Commission proposed a new regulation on the treatment of limited liability partnerships (LLPs). LLPs share some characteristics with corporations and some characteristics with partnerships. Under the proposed regulation, LLPs registered with the Internal Revenue Service as corporations would be treated as corporations under the Act, enabling such LLPs to establish separate segregated funds like other corporations. Similarly, LLPs not registered with the Internal Revenue Service as corporations would be treated as partnerships under the Act, which would permit such LLP's to make limited contributions to candidates. *79 Fed. Reg. 74121 (Dec. 13, 2012).*
  - a. The Commission has reviewed the comments received in response to the Notice of Proposed Rulemaking, but has not decided whether to proceed with this rulemaking matter.

2. REG 2013-01 (Technological Modernization): After considering the comments received in response to its Advance Notice of Proposed Rulemaking, which asked whether the Commission should revise its regulations to reflect technological advances, the Commission issued a Notice of Proposed Rulemaking proposing to revise many of its regulations. 81 Fed. Reg. 76416 (Nov. 2, 2016).
  - a. After considering the comments received in response to the Notice of Proposed Rulemaking, OGC circulated drafts of the Final Rule. The Commission is currently considering the drafted Final Rule.
3. REG 2011-02 (Internet Communication Disclaimers): After considering the comments received in response to its Advance Notice of Proposed Rulemaking, which asked whether the Commission should revise its disclaimer regulation with respect to certain internet communications, the Commission issued a Notice of Proposed Rulemaking proposing to revise that regulation. *See* Notice of Proposed Rulemaking, 83 Fed. Reg. 12864 (Mar. 26, 2018).
  - a. The Commission held a two-day hearing on June 27-28, 2018 on the Notice of Proposed Rulemaking and heard testimony from 18 witnesses. *See* Hearing Transcript for June 27, 2018 (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=394833>) and Hearing Transcript for June 28, 2018 (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=394834>).
  - b. The Commission has considered the written comments and witness testimony it received in response to the Notice of Proposed Rulemaking. It is not at this time clear whether there will be four affirmative votes to adopt a final rule.

36. *Please provide a brief summary, including the current status of Commission action, of any petition for rulemaking for which the Commission approved a Notice of Availability since January 1, 2012. In the summary, please provide the status of the Commission's deliberations on these matters, including but not limited to whether and when it expects to take further action on each petition.*

The Commission has issued 14 Notices of Availability regarding petitions for rulemaking it has received since January 1, 2012.

1. REG 2012-01 (Electioneering Communications Reporting): The Commission sought comment on a petition for rulemaking submitted by the Center for Individual Freedom. The petition asked the Commission to revise its regulations on the reporting of electioneering communications. *See* Notice of Availability, 77 Fed. Reg. 65332 (Oct. 26, 2012).
  - a. After reviewing the comments received on the petition for rulemaking, the Commission considered whether to open a rulemaking in response to the

petition. During its Open Meeting on March 7, 2013, the Commission voted on two motions: a motion to open a rulemaking in response to the petition and a motion to dismiss the petition. Neither motion received the required minimum affirmative vote of four Commissioners.<sup>33</sup>

2. REG 2014-05 (Definition of “Federal Office”): The Commission issued a Notice of Availability seeking comment on a petition for rulemaking submitted by National Convention PBC. The petition asked the Commission to revise its regulation defining “federal office” to include delegates to a constitutional convention. 79 Fed. Reg. 59459 (October 2, 2014).

a. After reviewing the comments received on the petition, the Commission concluded its consideration by voting to issue a Notice of Disposition announcing its decision not to open a rulemaking.<sup>34</sup> 79 Fed. Reg. 75455 (Dec. 18, 2014).

3. REG 2014-06 (Candidate Debates): The Commission issued a Notice of Availability seeking comment on a petition for rulemaking submitted by Level the Playing Field. The petition asked the Commission to revise its regulation on candidate debates to prohibit debate staging organizations from using a minimum polling threshold as a criterion for determining who may participate in presidential and vice presidential candidate debates. 79 Fed. Reg. 68137 (Nov. 14, 2014).

a. After reviewing the comments received on the petition, the Commission considered whether to open a rulemaking in response to the petition. During its Open Meeting on July 16, 2015, the Commission voted on two motions. The first motion was to open a rulemaking. That motion failed to receive the required minimum four affirmative votes. The second motion was to issue a Notice of Disposition announcing the Commission’s decision not to open a rulemaking. That motion passed, so the Commission issued the Notice of Disposition.<sup>35</sup> 80 Fed. Reg. 72616 (Nov. 20, 2015).

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<sup>33</sup> Commissioners Hunter, McGahn II, and Petersen voted to initiate a rulemaking. Commissioners Walther and Weintraub dissented. Then, Commissioners Walther and Weintraub voted to dismiss the petition. Commissioners Hunter, McGahn II, and Petersen dissented. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=296278>).

<sup>34</sup> Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=310944>).

<sup>35</sup> Commissioners Ravel and Weintraub voted to open a rulemaking. Commissioners Goodman, Hunter, Petersen, and Walther dissented. Then, Commissioners Goodman, Hunter, Petersen, and Walther voted to direct OGC to draft a notice of disposition. Commissioners Ravel and Weintraub dissented. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=341903>).

- b. After the Commission issued its Notice of Disposition in this matter, the petitioner sued the Commission over its decision not to open a rulemaking. The United States District Court for the District of Columbia ordered the Commission to reconsider its decision. The Commission then reconsidered the matter and again decided not to open a rulemaking, voting to approve a Supplemental Notice of Disposition.<sup>36</sup> 82 Fed. Reg. 15468 (March 29, 2017). Subsequently, the court reviewed the Commission's explanation of its decision not to open a rulemaking in response to the petition and upheld the Commission's decision. *See Level the Playing Field v. FEC*, Case No. 15-cv-1397 (TSC), 2019 WL 1440883, at \*19 (D.D.C. Mar. 31, 2019). On April 22, 2019, the plaintiff filed a notice of appeal to the United States Court of Appeals for the District of Columbia Circuit.
- 4. REG 2014-09 (Federal Contractors): The Commission sought comment on a petition for rulemaking submitted by Public Citizen. The petition asked the Commission to amend its regulations regarding federal contractors to include certain factors for determining whether entities of the same corporate family are distinct business entities for purposes of the prohibition on contributions by federal contractors. *See* Notice of Availability, 80 Fed. Reg. 16595 (Mar. 30, 2015).
  - a. After reviewing the comments received on the petition for rulemaking, the Commission considered whether to open a rulemaking in response to the petition. During its Open Meeting on November 10, 2015, the Commission voted on a motion to open a rulemaking. The motion failed to receive the required minimum affirmative vote of four Commissioners.<sup>37</sup>
- 5. REG 2015-01 (Administrative Fines and Forms): The Commission sought comment on a petition for rulemaking submitted by seven attorneys. The petition asked the Commission to expand its Administrative Fines Program, as authorized by Congress, and to revise and update several Commission forms and their instructions. *See* Notice of Availability, 80 Fed. Reg. 16594 (Mar. 30, 2015).
  - a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.

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<sup>36</sup> Commissioners Goodman, Hunter, Petersen, and Walther voted affirmatively for the motion. Commissioners Ravel and Weintraub dissented. See Certification of Vote (available at: [See Certification of Vote](https://sers.fec.gov/fosers/showpdf.htm?docid=357019) (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=357019>)).

<sup>37</sup> Commissioners Ravel, Walther, and Weintraub voted affirmatively for the motion. Commissioners Goodman, Hunter, and Petersen dissented. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=346292>).

6. REG 2015-04 (Independent Spending by Corporations, Labor Organizations, Foreign Nationals, and Certain Political Committees (Citizens United)): The Commission sought comment on two petitions for rulemaking: one submitted by Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc., and the other submitted by Craig Holman and Public Citizen. Both petitions asked the Commission to issue new regulations and revise existing regulations concerning: (1) The disclosure of certain financing information regarding independent expenditures and electioneering communications; (2) election-related spending by foreign nationals; (3) solicitations of corporate and labor organization employees and members; and (4) the independence of expenditures made by independent-expenditure-only political committees and accounts. *See* Notice of Availability, 80 Fed. Reg. 45116 (July 29, 2015).
  - a. After reviewing the comments received on the petition for rulemaking, the Commission considered whether to open a rulemaking in response to the petition. During its Open Meeting on December 17, 2015, the Commission voted on a motion to open a rulemaking. The motion failed to receive the required minimum affirmative vote of four Commissioners.<sup>38</sup>
7. REG 2015-03 (Contributions from Corporations and Other Organizations to Political Committees): The Commission sought comment on a petition for rulemaking submitted by Make Your Laws PAC, Inc. and Make Your Laws Advocacy, Inc. The petition asked the Commission to revise its regulations on the reporting of contributions to political committees from corporations and other organizations. *See* Notice of Availability, 80 Fed. Reg. 45115 (July 29, 2015).
  - a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.
8. REG 2014-10 (Party Contribution Limits): The Commission sought comment on a petition for rulemaking submitted by the Perkins Coie LLP Political Law Group. The petition asked the Commission to adopt new regulations, and to revise its current regulations, to implement amendments to the Federal Election Campaign Act, 52 U.S.C. 30101–46 (“FECA”), made by the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113–235, 128 Stat. 2130, 2772 (2014). The petition also asked the Commission to adopt new regulations, and to revise its current regulations, regarding convention committees. *See* Notice of Availability, 81 Fed. Reg. 69722 (Oct. 7, 2016).

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<sup>38</sup> Commissioners Ravel, Walther, and Weintraub voted affirmatively for the motion. Commissioners Goodman, Hunter, and Petersen dissented. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=346628>).

- a. OGC circulated an outline of a draft NPRM to the Commission on October 23, 2015. *See* Agenda Document No. 15-54-B (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=347532>). The Commission considered the outline at its Open Meetings on October 29, 2015, November 10, 2015, and December 17, 2015. During its Open Meeting on December 17, 2015, the Commission voted unanimously to refer the matter to the Regulations Committee for further work. *See* Certification of Vote (available at: <https://sers.fec.gov/fosers/showpdf.htm?docid=347539>).
  - b. After reviewing the comments received on the petition for rulemaking, OGC circulated drafts of the NPRM. The Commission is currently considering the drafted NPRM.
9. REG 2016-03 (Political Party Rules): The Commission sought comment on a petition for rulemaking submitted by the Minnesota Democratic-Farmer-Labor Party and its Chair, Ken Martin. The petition asked the Commission to revise several of its regulations on the use of federal funds to pay for certain activities of state, district, or local committees of a political party. *See* Notice of Availability, 81 Fed. Reg. 69721 (Oct. 7, 2016).
  - a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.
10. REG 2018-01 (Former Candidates' Personal Use): The Commission sought comment on a petition for rulemaking submitted by the Campaign Legal Center. The petition asked the Commission to revise its regulations on the personal use of campaign funds to explicitly apply those regulations to former candidates and officeholders. *See* Notice of Availability, 83 Fed. Reg. 12283 (Mar. 21, 2018).
  - a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.
11. REG 2018-02 (Personal Use of Leadership PAC Funds): The Commission sought comment on a petition for rulemaking received from the Campaign Legal Center, Issue One, and five former United States Representatives. The petition asked the Commission to revise one of its regulations on the personal use of campaign funds to explicitly apply that regulation to leadership PAC funds. *See* Notice of Availability, 83 Fed. Reg. 46888 (Sept. 17, 2018).
  - a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.
12. REG 2016-01 (Procedures for Public Comment on Draft Advisory Opinions): The Commission sought comment on a petition for rulemaking submitted by Make Your

Laws PAC, Inc., Make Your Laws Advocacy, Inc., Make Your Laws, Inc., and Dan Backer, Esq. The petition asked the Commission to revise its regulation on advisory opinion procedures to establish specific time periods for the submission of public comments on drafts of advisory opinions before the Commission votes on the drafts. *See Notice of Availability*, 83 Fed. Reg. 62283 (Dec. 3, 2018).

- a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.

13. REG 2018-03 (Definition of “Contribution”): The Commission sought comment on a petition for rulemaking submitted by the Institute for Free Speech. The petition asked the Commission to revise its regulation defining “contribution” in light of the United States District Court for the District of Columbia’s decision in *Citizens for Responsibility & Ethics in Washington v. FEC*. *See Notice of Availability*, 83 Fed. Reg. 62282 (Dec. 3, 2018).

- a. After reviewing the comments received on the petition for rulemaking, the Commission has not decided whether to take any further action on the petition.

14. REG 2018-05 (Size of Letters in Television Disclaimers): The Commission sought comment on a petition for rulemaking submitted by Extreme Reach. The petition asked the Commission to revise its regulation on disclaimer requirements for television broadcast advertisements, which requires the letters for disclaimers in those advertisements to be a certain minimum height. The petition contends that the current standard for such advertisements is outdated due to the fact that it was promulgated during a period when television was broadcast in standard definition, rather than the current high definition. *See Notice of Availability*, 84 Fed. Reg. 3344 (Feb. 12, 2019).

- a. The comment period on the petition for rulemaking closed on April 15, 2019. The Commission has not yet decided whether to take any further action on the petition.

37. *What further action does the Commission anticipate taking on REG 2011-02 concerning internet communication disclaimers? When does it anticipate taking this further action, if any?*

The Commission has considered the written comments submitted in response to the March 2018 Notice of Proposed Rulemaking and witness testimony it received in connection with its June 2018 hearing. It is not at this time clear whether there will be four affirmative votes to adopt a final rule.

38. *How many litigation cases has the Commission appealed in the past 10 years after an adverse court ruling?*

Under section 307(a)(6) of FECA, the Commission has the power to “appeal any civil action in the name of the Commission to enforce the provisions [of FECA] through its general counsel.”<sup>39</sup> Exercising this power to appeal requires the affirmative vote of four members of the Commission.<sup>40</sup> In the past 10 years, the Commission has not garnered four affirmative votes in favor of appealing any of the approximately 13 adverse or partially adverse district court judgments that it has formally considered for appeal.

39. *For the past decade, how many requests for advisory opinions lacked four affirmative votes to provide an answer? Please provide the numbers and advisory opinion citations by year.*

Since January 1, 2009 through April 11, 2019, the Commission has been unable to approve a response by four or more affirmative votes to 31 requests for advisory opinions, as follows:

**2009 (5)**

2009-03 (IntercontinentalExchange, Inc.)  
2009-11 (Senator John Kerry and the John Kerry for Senate Committee)  
2009-17 (Romney for President, Inc.)  
2009-25 (Jennifer Brunner Committee)  
2009-28 (Democracy Engine Inc. PAC)

**2010 (1)**

2010-20 (National Defense PAC)

**2011 (4)**

2010-25 (RG Entertainment, Ltd.)  
2011-09 (Facebook)  
2011-16 (Dimension4, Inc. PAC)  
2011-23 (American Crossroads)

**2012 (6)**

2012-01 (Stop This Insanity, Inc. Employee Leadership Fund)  
2012-08 (Repledge)  
2012-20 (Markwayne Mullin)  
2012-24 (Dean Peterson)  
2012-29 (Hawaiian Airlines, Inc.)  
2012-37 (Yamaha Motor Corporation, U.S.A.)

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<sup>39</sup> FECA, § 307(a)(6), codified at 52 U.S.C. § 30107(a)(6).

<sup>40</sup> FECA, § 306(c), codified at 52 U.S.C. § 30106(c).

**2013 (5)**

2012-25 (American Future Fund/American Future Fund Political Action/McIntosh)  
2013-14 (Martin Long)  
2013-15 (Conservative Action Fund)  
2013-17 (Tea Party Leadership Fund)  
2013-19 (Yamaha Motor Corporation, U.S.A.)

**2014 (1)**

2013-18 (Revolution Messaging, LLC)

**2015 (1)**

2015-3 (Democracy Rules, Inc.)

**2016 (4)**

2016-04 (Grand Trunk Western Railroad – Illinois Central Railroad PAC)  
2016-12 (Citizen Super PAC)  
2016-13 (Martins for Congress II)  
2016-20 (Christoph Mlinarchik)

**2017 (1)**

2016-23 (Socialist Workers Party)

**2018 (2)**

2018-04 (Conservative Primary LLC)  
2018-08 (Rep. Darrell Issa)

**2019 (1)**

2019-06 (Leigh Brown) April 11, 2019

In 32 other AOs, the Commission answered some questions raised by the advisory opinion requests, but lacked four votes to answers other questions.

**2009 (3)**

2009-04 (Al Franken for U.S. Senate/Democratic Senatorial Campaign Committee)  
2009-13 (The Black Rock Group)  
2009-14 (Mercedes-Benz USA LLC/Sterling Truck Group)

**2010 (6)**

2010-02 (West Virginia Republican Party, Inc.)  
2010-07 (Yes on FAIR)  
2010-18 (Minnesota Democratic-Farmer-Labor Party)  
2010-19 (Google, Inc.)  
2010-24 (Republican Party of San Diego County)  
2010-30 (Citizens United)

**2011 (2)**

2011-02 (Sen. Scott Brown/Scott Brown for U.S. Senate Committee)  
2011-14 (Utah Bankers Association/Utah Bankers Association Action PAC)

**2012 (7)**

2011-24 (StandLouder.com)  
2012-06 (RickPerry.org, Inc.)  
2012-07 (Feinstein for Senate)  
2012-10 (Greenberg Quinlan Rosner Research, Inc.)  
2012-11 (Free Speech)  
2012-19 (American Future Fund)  
2012-27 (National Defense Committee)

**2013 (1)**

2013-04 (Democratic Governors Association/Jobs & Opportunity)

**2014 (2)**

2014-02 (Make Your Laws PAC, Inc.)  
2014-06 (Rep. Paul Ryan/Ryan for Congress, Inc./Prosperity Action, Inc.)

**2015 (3)**

2015-06 (Rep. Maxine Waters)  
2015-09 (Senate Majority PAC/House Majority PAC)  
2015-11 (FYP, LLC)

**2016 (4)**

2015-16 (Niger Innis for Congress)  
2016-02 (Enable Midstream Services, LLC)  
2016-06 (Internet Association/IAPAC)  
2016-10 (Parker)

**2017 (4)**

2016-21 (Great America PAC)  
2017-05 (Great America PAC/The Committee to Defend the President)  
2017-06 (Stein/Gottlieb)  
2017-12 (Take Back Action Fund)

*40. Do you view advisory opinions as binding on analogously-situated parties?*

The FECA provides that “any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which an advisory opinion was rendered” may rely on that advisory opinion.<sup>41</sup>

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<sup>41</sup> See 52 U.S.C. § 30108(c)(1)(B).

41. *In the Minutes of an Open Meeting from Sept. 15, 2016, then-Chair Petersen stated that, without objection, the General Counsel's Office was "directed to prioritize cases involving allegations of foreign influence." What is the status of this direction to the Office of General Counsel? How many cases have been prioritized and what is their disposition?*

As of September 15, 2016, the Commission had 14 enforcement matters in house that included alleged violations of the foreign national prohibition. Of those 14, 12 have been closed and only two remain open.

Of the 12 matters that have been closed:

- Two matters were resolved through conciliation agreements containing civil penalties totaling \$969,000.<sup>42</sup>
- Two matters were closed after the Commission found no reason to believe any of the respondents had violated the law.<sup>43</sup>
- Three matters were, with respect to the majority of respondents, dismissed by majority vote of the Commission; other respondents were the subject of "no reason to believe" findings.<sup>44</sup>
- One matter was dismissed after being further prioritized for early dismissal under the Commission's Enforcement Priority System.<sup>45</sup>
- Four matters were closed after split votes.<sup>46</sup>

The two remaining matters that were opened prior to September 15, 2016 and remain active and assigned to OGC Enforcement Division attorneys.

Subsequent to September 15, 2016, and as of April 1, 2019, the Commission received an additional 40 enforcement matters that include alleged violations of the foreign national prohibition. Of those 40, eight have been closed and 32 remain open.

Of the eight additional matters that have been closed:

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<sup>42</sup> See FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition, 8-9 and n. 36 (Sept. 18, 2018), *copy enclosed and available at [https://www.fec.gov/resources/cms-content/documents/Foreign\\_National\\_Report\\_To\\_Congress.pdf](https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf)* ("Appropriations Report") (discussion of MUR 7035 (Australian Labor Party, *et al.*)); *see also* answer to question 42, *supra* (discussion of MUR 7122 (Right to Rise USA)).

<sup>43</sup> See MUR 6959 (DNC and Nava), <https://www.fec.gov/data/legal/matter-under-review/6959/>; MUR 7059 (Human Rights for Vietnam PAC, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7059/>

<sup>44</sup> See Appropriations Report at 8 and n. 35 (discussion of MUR 7081 (Floridians for a Strong Middle Class) and 9 and n.39 (discussion of MURs 6962 and 6982 (Project Veritas, *et al.*)))

<sup>45</sup> See Appropriations Report at 9 and n. 38 (discussion of MUR 6944 (Farias))

<sup>46</sup> See Appropriations Report at 9 (discussion of MUR 6976 (City Council Committee for Johnny W. Streets, Jr.) and 11 and n.46 (discussion of MURs 7094, 7096 and 7098 (Donald J. Trump for President, *et al.*)))

- Two matters were closed after the Commission found no reason to believe any of the respondents had violated the law.<sup>47</sup>
- One matter was transferred from OGC to the Alternative Dispute Resolution Office; the Commission subsequently dismissed the matter by a majority vote.<sup>48</sup>
- Three matters were dismissed by a majority vote.<sup>49</sup>
- One matter was closed after a split vote.<sup>50</sup>

Of the remaining 32 matters, 24 are active and assigned to OGC Enforcement attorneys, while eight are inactive. Seven of the eight inactive matters were received in 2019, and as of April 1 are in the Commission's case intake procedure.

In response to the Commission's direction to prioritize foreign national prohibition matters, the Office of General Counsel has taken a number of steps that have made possible the results discussed above. Along with cases that are statute-of-limitations imperiled when OGC receives them, foreign national prohibition cases are assigned to OGC staff attorneys before any other class of cases. OGC has also modified its Status of Enforcement reports to the Commission so that the Commission is provided with complete data on every foreign national prohibition case on a quarterly basis. Further, OGC has revised its procedures so that it may more efficiently track the progress of all foreign national prohibition matters through the enforcement process. OGC has also modified its case management software to make it easier to run reports for the Commission concerning all foreign national prohibition matters. Finally, for foreign national prohibition matters that are not resolved by tally votes, the Commission has prioritized the placement of these matters on Executive Session agendas for faster Commission consideration.

*42. Besides efforts to encourage voluntary compliance with the law and deadlocks on enforcement matters, what action has the Commission taken to address the threat of foreign interference in American elections?*

On September 18, 2018, the FEC provided a comprehensive Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition. This Report provides a discussion of the legal background on FECA's foreign national prohibition and answers three points raised posed by the Appropriations Committees, which are:

- (1) The Commission's Role in Enforcing the Foreign National Prohibition;
- (2) How the Commission Identifies Foreign National Contributions or Donations; and
- (3) The Commission's Plans for Enforcing the Foreign National Prohibition.

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<sup>47</sup> See Appropriations Report at 8 and n. 33 (discussion of MUR 7141 (Beverly Hills Residents and Businesses to Preserve Our City)); *see also* MUR 7144 (Jacobs, *et al.*), <https://www.fec.gov/data/legal/matter-under-review/7144/>

<sup>48</sup> See Appropriations Report at 10 and n.43 (discussion of ADR 822 (Arteaga)).

<sup>49</sup> See answer to question 42, *supra* (discussion of MURs 7430, 7444 and 7445 (Unknown Respondents))

<sup>50</sup> See Appropriations Report at 7 and n. 30 (discussion of MUR 7205 (Jill Stein for President, *et al.*))

The Report discusses 23 enforcement and compliance cases recently resolved by the Commission, involving over \$400,000 in civil penalties.<sup>51</sup> A copy of the Report is attached.<sup>52</sup>

Since then, the Commission has closed two cases involving the foreign national prohibition. One involved a solicitation of a foreign national contribution. Right to Rise USA, an independent expenditure-only committee (commonly known as a “super PAC”) that supported Governor John E. “Jeb” Bush’s 2016 presidential campaign signed a conciliation agreement agreeing that it violated the foreign national prohibition when its agent, Neil Bush, solicited a foreign national for a political contribution, and when it accepted the funds. It agreed to cease and desist from violating the foreign national prohibition and paid a \$390,000 civil penalty. In a separate conciliation agreement, the contributors agreed that they violated the foreign national prohibition in making or substantially assisting in the making of the contributions to Right to Rise USA. They also agreed to cease and desist from violating the foreign national prohibition and paid a \$550,000 civil penalty.<sup>53</sup>

Another MUR involved allegations of foreign national contributions of \$30 to state and local candidates in Texas. Consistent with the advice of the General Counsel, the Commission voted unanimously to exercise its prosecutorial discretion to dismiss the complaints, given the small amounts at issue and the difficulties posed by a potential investigation to identify unknown respondents.<sup>54</sup>

43. *What have been the effects of Directive 70 on the audit process?*

The effects of Directive 70 are:

- The number of reports produced by the Audit Division for each audit has increased from two to four. Prior to Directive 70, the audit process included two audit reports -- the Interim Audit Report (or Preliminary Audit Report for Title 26 audits) and the Final Audit Report. Under Directive 70 and other policies and directives, the audit process now includes four audit reports – the Interim Audit Report (or Preliminary Audit Report for Title 26 audits), the Draft Final Audit Report which is reviewed by the Commission with a memorandum from the auditors recommending findings (Audit Division

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<sup>51</sup> See FEC Report to the Committees on Appropriations on Enforcing the Foreign National Prohibition, 4-11 (Sept. 18, 2018), *copy enclosed and available at* [https://www.fec.gov/resources/cms-content/documents/Foreign\\_National\\_Report\\_To\\_Congress.pdf](https://www.fec.gov/resources/cms-content/documents/Foreign_National_Report_To_Congress.pdf).

<sup>52</sup> Additionally, then-Vice Chair Ellen Weintraub wrote separately to express her own views on this topic. See Letter from Ellen L. Weintraub to Appropriations Committees (Sept. 28, 2018); *available at*: <https://www.fec.gov/resources/cms-content/documents/2018-09-28-ELW-Approps-Committees-reply.pdf>.

<sup>53</sup> See MUR 7122 (Right to Rise USA) <https://www.fec.gov/data/legal/matter-under-review/7122/>.

<sup>54</sup> See MUR 7430, 7444 & 7445 (Unknown Respondent), <https://www.fec.gov/data/legal/matter-under-review/7430/>.<sup>55</sup> The Commission unanimously voted on June 26, 2018 to terminate the audit of all 2014 party committees and one authorized committee and to enter the committees into the Alternative Dispute Resolution process immediately.

Recommendation Memorandum), the Proposed Final Audit Report, and the Final Audit Report of the Commission.

- The number of opportunities for committees to respond to a finding has increased from two to five. Prior to Directive 70, Committees could respond to findings after the exit conference and/or after issuance of the Interim Audit Report. Title 26 committees could also request an Administrative Review Hearing for repayment determinations after issuance of the Final Audit Report. With the adoption of Directive 70, committees can now respond to findings after the Exit Conference, after the issuance of the Interim Audit Report and the Draft Final Audit Report. Additionally, committees have the opportunity to interact with the Commission directly through a Request for Legal Consideration and an Audit Hearing, if the committee's request is granted by the Commission. Title 26 committees can also request an Administrative Review Hearing for repayment determinations after issuance of the Final Audit Report of the Commission.
- Legal issues may be broken down into severable sub-findings.
- Commissioners review the audit report language before it changes from an Audit Division report (Interim Audit Report and Draft Final Audit Report) to a Commission report (Final Audit Report of the Commission).
- The number of audit reports and memoranda reviewed by the Office of General Counsel has increased from two to three in certain audits.
- Audit reports and associated documents (legal analysis, committee responses, etc.) are placed on the FEC website. Placing these documents on the web provides more transparency to the public.
- Findings proposed by the auditors that do not garner four votes to either approve or disapprove remain in the audit report, however, the proposed finding is re-categorized as an "Additional Issue" and no further action can be taken on the matter.
- The Commission can add findings to an audit report upon four affirmative votes.
- For reasons stated above, among others, the length of time the agency spends auditing each committee has increased.

*44. Have any Commissioners put forward proposals to change any aspect of Directive 70 on processing audits?*

In recent years, Commissioners have discussed various proposals to modify Directive 70 with the Audit Division and Office of General Counsel staff. In August and September 2017, Audit Division and OGC management met with several Commission offices to discuss how to improve the timeliness of audits. Discussions involved both making changes to Directive 70 and internal division changes. As a result of these meetings, the Audit Division implemented stricter milestones, and time-saving mechanisms, including procedures for acquiring committee records more efficiently and the development of standardized templates.

During 2018, additional informal meetings were held with the Audit Division and OGC to consider changes to the report writing process. Additionally, in August 2018, the Assistant Staff Director of Audit circulated a memo to the Commission outlining procedural changes to further improve audit turnaround times.

45. *What is the average time that it takes to complete an audit under Directive 70?*

The length of time each audit takes depends on its type and complexity. The chart below shows the average duration of audits by committee type over four election cycles by number of months. The chart documents the progress made thus far in reducing the time the FEC spends auditing each committee. The Commission continues to explore ways of further reducing the duration of audits.

Committee Type	Average Number of Months			
	2010 Cycle	2012 cycle	2014 <sup>55</sup> cycle	2016 <sup>56</sup> cycle
Authorized <sup>57</sup>	19.1	27.9	23.5	18.3
Unauthorized <sup>58</sup>	25.3	36.4	20.9	5
Title 26 <sup>59</sup>	N/A	27.8	N/A	20.2

46. *What are the greatest challenges to the Commission's ability to fulfill its mission and mandate? Each Commissioner is invited to answer this question separately.*

Commissioners will respond to this question separately.

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<sup>55</sup> The Commission unanimously voted on June 26, 2018 to terminate the audit of all 2014 party committees and one authorized committee and to enter the committees into the Alternative Dispute Resolution process immediately.

<sup>56</sup> Averages only include audits completed thus far in the 2016 election cycle.

<sup>57</sup> “Authorized Committees” are committees authorized by candidates for nomination or election to Federal office.

<sup>58</sup> “Unauthorized Committees” are not authorized by a candidate and include Political Party Committees, Nonconnected Committees, and separate segregated funds (or PACs). Separate segregated funds may be established by corporations, labor organizations, Trade Associations or Membership Organization.

<sup>59</sup> “Title 26 Committees” are established by candidates for President of the United States who receive funds under the Presidential public funding programs.